

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court 600 W Capitol Ave, Suite A-14 on the following ☐ Patents or ☐ Trademarks:

DOCKET NO. F08cv0050JLH	DATE FILED 9/12/2008	U.S. DISTRICT COURT 600 W Capitol Ave, Suite A-149, Little Rock, AR 72201
PLAINTIFF Bad Boy Inc		DEFENDANT Bad Boy Enterprises LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,247,862		(SEE THE ATTACHED COMPLAINT)
2 2,973,044		
3 3,278,592		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1	
2	
3	
4	
5	

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

SEP 12 2008

JAMES W. McDERMACK, CLERK
By: *[Signature]* DEP. CLERK

BAD BOY, INC., an Arkansas corporation

Plaintiff

V.

Case No. 1:08cv00050 JLH

BAD BOY ENTERPRISES LLC, a
Mississippi limited liability company

Defendant

This case assigned to District Judge *[Signature]*
and to Magistrate Judge *[Signature]*

COMPLAINT

Plaintiff Bad Boy, Inc. ("Plaintiff" and/or "Bad Boy") through the undersigned attorneys, for its Complaint against Defendant Bad Boy Enterprises LLC ("Defendant" and/or "BBE"), states and alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action arising under the Trademark Act of 1946, as amended (the "Lanham Act", codified at 15 U.S.C. § 1051, et seq.), for federal trademark infringement, false designation of origin, and false or misleading description or representation of fact, under 15 U.S.C. § 1125 and Arkansas common law.

2. This Court has jurisdiction of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a) and (b) in that this case involves a federal question arising under the trademark laws of the United States, and unfair competition joined with a substantial and related claim under trademark law.

3. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332, diversity of citizenship of the parties; the amount in controversy, exclusive of interest and costs, exceeds the sum of seventy-five thousand dollars (\$75,000).

4. This Court has jurisdiction of the state common law and statutory claims in that said state law claims are joined with a substantial and related federal claim arising under the trademark laws of the United States.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred in this judicial district; for example, Defendant has used (or regularly caused to be used) Plaintiff's trademark BAD BOY, or confusingly similar variations thereof, within this district.

THE PARTIES

6. Plaintiff Bad Boy is a corporation organized and existing under the laws of the State of Arkansas, having its principal place of business at 102 Industrial Drive, Batesville, Arkansas, engaged in the manufacture and sale of commercial grade riding mowers under the trademark BAD BOY; Plaintiff will soon launch a line of multi-terrain utility vehicles under the trademark BAD BOY MTV. (Plaintiff's BAD BOY and BAD BOY MTV trademarks will be referred to collectively as "Plaintiff's Marks".)

7. Upon information and belief, Defendant BBE is a limited liability company organized and doing business under the laws of the State of Mississippi, having its principal place of business at 276 Highland Blvd., Natchez, Mississippi; Defendant maintains Arkansas dealerships in Benton, Cabot, El Dorado, Monticello, Pine Bluff and Paragould, Arkansas, engaged in the promotion and sales of modified golf carts under the trademarks "Bad Boy" and Bad Boy Buggies (collectively Defendant's "Junior Marks").

8. This action concerns Defendant BBE's adoption and use of a trademark including the term "Bad Boy" on modified golf carts about 4½ after Plaintiff Bad Boy had been using its mark BAD BOY on commercial mowers, and about 2½ years after Plaintiff had been pursuing registration of its BAD BOY mark in the United States Patent & Trademark Office ("USPTO"). This action also concerns the USPTO's improper issuance of trademark registrations to Defendant BBE for the "Bad Boy" mark, which registration is preventing Plaintiff's registration of a mark BAD BOY MTV for use in connection with multi-terrain vehicles.

STATEMENT OF FACTS COMMON TO ALL COUNTS

Plaintiff's BAD BOY Trademark and Registration

9. Plaintiff Bad Boy is the longest continuous user of the trademark BAD BOY for mowers and related products (the "Senior Mark"); Plaintiff has used the Senior Mark continuously in commerce since at least as early as 1 October 1998.

10. Plaintiff's commercial grade mowers and related products have been accepted in various market segments, including maintenance of golf courses, parks, pastures and fields; accessory products used in connection with Plaintiff's mowers include ground aerators, turf dethatchers, spray booms for fertilizers and defoliants, and snow plows.

11. On 16 August 1999, Plaintiff filed Application No. 75/777,175 (the "Senior Application") with the USPTO, to register one graphic version of the Senior Mark, BAD BOY (& design), used in connection with lawn mowers.

12. On or about 8 August 2000, Plaintiff's Senior Application was published for opposition in the Official Gazette of the USPTO.

13. On 7 September 2000, a third party having a registration for BAD BOY CLUB (& design), for use in connection with clothing such as shirts and t-shirts, filed an opposition proceeding against Plaintiff's Senior Application; accordingly, prosecution of Plaintiff's Senior Application was suspended during the pendency of said opposition proceeding at the Trademark Trial and Appeal Board.

14. After the Trademark Trial and Appeal Board denied that party's motion for summary judgment, said opposition was withdrawn on 22 June 2006, and it was dismissed with prejudice on 20 July 2006.

15. On 29 May 2007, Plaintiff's Senior Application was allowed to issue as Registration No. 3,247,862 (the "BAD BOY Registration") on the Principal Register of the USPTO, protecting that graphic version of the Senior Mark used in connection with lawn mowers; Attachment A hereto is a copy of Plaintiff's BAD BOY Registration.

Defendant BBE's "Bad Boy" Trademark and Registration

16. At least 52 months after Plaintiff's adoption and use of its Senior Mark, and about 31 months after Plaintiff's Senior Application was published in the Official Gazette, Defendant adopted and began using trademarks containing "Bad Boy" in connection with modified golf carts that it characterized as off road vehicles.

17. On 25 February 2003, while Plaintiff's Senior Application was suspended pending the outcome of the opposition proceeding, Defendant BBE filed Application No. 78/218,933 to register the mark "Bad Boy" on the Principal Register of the USPTO, for use in connection with off road vehicles; attachment B hereto is a copy of said application, underlining added. (Since the "Bad Boy" mark subject to said application includes the quotation marks, said application will be referred to as the " "Bad Boy" Application".)

18. Accompanying said application was a copy of a flyer or similar marketing material depicting the mark "Bad Boy" atop a cartoon-like 4-wheel drive golf cart used for "GARDENING · FARMING · YARDWORK", among other things.

19. Although Defendant's "Bad Boy" Application stated that BBE first used said "Bad Boy" mark on 20 February 2003, in February of 2005 Defendant filed a Statement of Use amending its first use date to 30 September 2003; Attachment C hereto is a copy of said Statement of use, including the use specimens submitted therewith, underling added.

20. Said use specimens included a printout of a web page again depicting the mark "Bad Boy" atop a cartoon-like 4-wheel drive golf cart used for "GARDENING - FARMING - YARDWORK", among other things.

21. On 19 July 2005, Defendant's "Bad Boy" Application was allowed to issue as Registration No. 2,973,044 (the "Bad Boy" Registration") on the Principal Register of the USPTO, for that stylized version of the "Bad Boy" mark used in connection with all terrain vehicles; Attachment D hereto is a copy of Defendant BBE's "Bad Boy" Registration.

Defendant BBE's Bad Boy Buggies Registration

22. On 12 October 2006, Defendant BBE filed Registration No. 77/019,467 to register the mark Bad Boy Buggies on the Principal Register of the USPTO, for use in connection with all terrain vehicles (the "Bad Boy Buggies Application").

23. On 14 August 2007, Defendant BBE's Bad Boy Buggies Application was allowed to issue as Registration No. 3,278,592 (the "Bad Boy Buggies Registration") on the Principal Register of the USPTO, used in connection with all terrain vehicles; Attachment E hereto is a copy of Defendant BBE's Bad Boy Buggies Registration.

Plaintiff's BAD BOY MTV Application

24. On 26 February 2007, Plaintiff filed its intent-to-use Application No. 76/673,149 to register the mark BAD BOY MTV on the Principal Register of the USPTO (the "BAD BOY MTV Application"), for use in connection with 4-wheeled multi-terrain vehicles.

25. On 21 June 2007, the Trademark Examiner of the USPTO issued an Office Action refusing registration on the stated grounds that Plaintiff's BAD BOY MTV mark, when used in connection with multi-terrain vehicles, so resembles Defendant's "Bad Boy" Registration as to be likely to cause confusion, mistake or deception; Attachment F hereto is a copy of said Office Action (the "Initial Office Action").

26. Said Office Action also noted that there may be a likelihood of confusion between Plaintiff's BAD BOY MTV mark and the mark BAD BOY TRUCKS (& design), which was the subject of Application No. 78/541,143 (the "BAD BOY TRUCKS Application") of a third party, that was entitled to priority of prosecution because it had been filed before Plaintiff's BAD BOY Application.

27. On 12 October 2007, the USPTO issued a Notice of Suspension, suspending Plaintiff's BAD BOY MTV Application pending the disposition of the BAD BOY TRUCKS Application.

28. On 14 March 2008, the USPTO issued a final Office Action rejecting Plaintiff's BAD BOY MTV Application based upon the likelihood of confusion, mistake or deception arising from the resemblance between Plaintiff's mark and Defendant BBE's mark protected by the "Bad Boy" Registration; Attachment G hereto is a copy of said Office Action (the "Final Office Action").

29. In reply to Plaintiff's previous contention that Plaintiff's senior use of the BAD BOY mark makes refusal of registration improper, the Final Office Action states that Plaintiff's claim to priority of use is not relevant to the *ex parte* prosecution of the BAD BOY Application, and that the Trademark Examiner has no authority to decide matters that constitute a collateral attack on the "Bad Boy" Registration.

30. The Final Office Action requires Plaintiff to respond within 6 months (by 14 September 2008), or the BAD BOY MTV Application will be abandoned; contemporaneous with the filing of this Complaint, Plaintiff has submitted a Request for Reconsideration to the USPTO, providing new evidence for consideration and, alternatively, requesting suspension of the prosecution of the BAD BOY MTV Application pending the outcome of this action.

31. Plaintiff's BAD BOY mark has been used by Plaintiff continuously in interstate commerce since its inception, and is still in use as of the date of this filing.

32. Plaintiff advertises and sells Plaintiff's commercial grade riding mowers under Plaintiff's BAD BOY mark throughout the United States including, but not limited to, Arkansas and Mississippi; accessory products used in connection with Plaintiff's mowers include ground aerators, turf dethatchers, spray booms for fertilizers and defoliants, and snow plows.

33. Plaintiff expects to soon expand its products, and launch a line of multi-terrain utility vehicles under the BAD BOY MTV mark; said products are within the zone of natural expansion of products that Plaintiff is entitled to.

34. On account of its long and continuous use of Plaintiff's BAD BOY mark, and substantial advertising and sales of its products under said mark, Plaintiff has established trademark rights in Plaintiff's Marks.

35. Through its promotional efforts, business conduct, and continuous use of Plaintiff's BAD BOY mark, Plaintiff has developed and maintained customers throughout the United States. Plaintiff's BAD BOY mark has become, through widespread and favorable public acceptance and recognition, an asset of substantial value as a symbol of Plaintiff, its high quality products, and its good will.

36. By letters dated 27 January 2005 and 22 February 2008, Plaintiff advised Defendant of its intent to manufacture and sell a utility vehicle under the BAD BOY mark, and urged Defendant to discontinue use of Plaintiff's BAD BOY mark.

37. By letter dated 12 August 2008, Defendant refused, and suggested that Plaintiff should be contemplating a change in its trademark.

38. Defendant has used its Junior Marks, or other marks confusingly similar to Plaintiff's Marks, in Arkansas and elsewhere, or otherwise assisted the unauthorized and infringing use of the same by others such as its dealers; Defendant has also used its Junior Marks in soliciting dealers in Plaintiff's products to carry Defendant's products.

39. Defendant's products are inferior to Plaintiff's products in performance, endurance and overall quality.

40. Defendant's misconduct in using Plaintiff's BAD BOY mark tarnishes and disparages Plaintiff's hard earned goodwill.

41. Defendant's commercial use of its Junior Marks has caused, and will likely cause, confusion in the marketplace with Plaintiff's Marks; Defendant's use of Plaintiff's BAD BOY mark has caused and will likely cause consumer confusion, mistake or deception with respect to the association (or lack thereof) of Defendant to Plaintiff, or as to the origin, sponsorship or approval of Defendant's products by Plaintiff. Further, Defendant's use of Plaintiff's BAD BOY mark in commercial advertising and

promotion misrepresents the nature, characteristics, qualities and origin of Defendant's products.

42. Plaintiff has been, and continues to be, injured by Defendant's unauthorized and unlawful use of Plaintiff's BAD BOY mark.

43. Defendant's use of Plaintiff's BAD BOY mark has caused, and continues to cause, irreparable harm to Plaintiff and Plaintiff's good will and reputation.

COUNT 1 – Declaratory Judgment

44. Plaintiff re-alleges each and every allegation of paragraphs 1 through 43 herein as if set forth verbatim.

45. A bona fide dispute exists between Plaintiff and Defendant regarding their respective rights and responsibilities concerning the BAD BOY trademark used in connection with ATVs; said dispute is a justiciable controversy between adverse parties.

46. Plaintiff has a legal interest in the controversy, in that (among other things) the Plaintiff owns the BAD BOY Registration for mowers, and Plaintiff will soon expand its products into multi-terrain vehicles and other utility vehicles.

47. The disputes alleged herein are ripe for adjudication.

48. Based on the foregoing facts, Plaintiff seeks a declaratory judgment from this Court pursuant to 28 U.S.C. §§ 2201, declaring that:

- (a) Defendant's "Bad Boy" Registration and Bad Boy Buggies Registration are cancelled; and
- (b) Plaintiff has senior and superior rights to all uses of marks containing BAD BOY used in connection with mowers, multi-terrain vehicles, ATVs, utility vehicles, lawn & garden tractors, and similar vehicles.

**COUNT 2 – Cancellation of Defendant's "Bad Boy" Registration
and Bad Boy Buggies Registration**

49. Plaintiff re-alleges each and every allegation of paragraphs 1 through 48 herein as if set forth verbatim.

50. Plaintiff believes that it is and will be damaged by continuation of Defendant's "Bad Boy" Registration and Bad Boy Buggies Registration.

51. Defendant's Junior Marks so resemble Plaintiff's Senior Mark as to be likely, when used on or in connection with Defendant's products, to cause confusion, mistake or deception.

52. Based on the foregoing facts, Plaintiff seeks an order canceling Defendant's "Bad Boy" Registration (No. 2,973,044) and Bad Boy Buggies Registration (No. 3,278,592).

**COUNT 3 - Trademark Infringement, and
False Designation of Origin or Description**

53. Plaintiff re-alleges each and every allegation of paragraphs 1 through 52 herein as if set forth verbatim.

54. Defendant's misconduct alleged herein constitutes commercial use of a trademark, or a false designation of origin, or a false or misleading description or representation of fact which is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendant with Plaintiff, or as to the origin, sponsorship or approval of Defendant's goods or commercial activities.

55. Defendant's misconduct alleged herein constitutes commercial use of a trademark, or a false designation of origin, or a false or misleading description or

representation of fact which in commercial advertising or promotion misrepresents the nature, characteristics or qualities of Defendant's products or commercial activities.

56. By engaging in the misconduct alleged herein, Defendant has infringed Plaintiff's BAD BOY Registration and Plaintiff's rights in its BAD BOY mark.

57. Furthermore, in view of the letters provided to Defendant by Plaintiff, such activities were, and remain, willful and intentional.

58. Defendant's willful and intentional acts of infringement have caused and are causing great and irreparable injury and damage to Plaintiff's business and its good will and reputation, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury and damage, leaving Plaintiff with no adequate remedy at law.

59. By reason of Defendant's misconduct alleged herein, Plaintiff is entitled to preliminary and permanent injunctive relief against Defendant, and anyone acting in concert with Defendant, enjoining further acts of infringement, unfair competition, false advertising and false designation of origin.

60. As a direct and proximate result of the misconduct of Defendant alleged herein, Plaintiff is entitled to recover Defendant's profits in an amount to be determined at trial, plus treble damages or other enhanced damages based on Defendant's willful, intentional, and/or grossly negligent acts, plus attorneys' fees, pursuant to 15 U.S.C. § 1117.

COUNT 4 - Violation of the Arkansas Deceptive Trade Practices Act

(Ark. Code Ann. § 4-88-101, et seq.)

61. Plaintiff re-alleges each and every allegation of paragraphs 1 through 60 herein as if set forth verbatim.

62. Defendant's acts constitute unfair trade practices in violation of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, et seq., because:

a. Defendant is using Plaintiff's BAD BOY mark knowingly to make false representations as to the characteristics, uses, benefits, source, sponsorship or approval of Defendant's products; and

b. Defendant is engaging in unconscionable, false or deceptive acts or practices in business, commerce or trade.

63. Defendant's willful and intentional misconduct alleged herein have caused and are causing great and irreparable injury and damage to Plaintiff's business and its good will and reputation, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury and damage, leaving Plaintiff with no adequate remedy at law.

64. By reason of the foregoing, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendant, and anyone acting in concert with Defendant, to enjoin further acts of infringement, unfair competition, false advertising and false designation of origin.

65. In view of the letters provided to Defendant by Plaintiffs, such activities were, and remain, willful and intentional, and both Plaintiff and the public have been injured by such activities.

66. As a direct and proximate result of the misconduct of Defendant alleged herein, Plaintiff is entitled to recover Defendant's profits in an amount to be determined at trial, plus treble damages or other enhanced damages based on Defendant's willful, intentional, and/or grossly negligent acts.

COUNT 5 - Tortious Interference With Prospective Business Relations

67. Plaintiff re-alleges each and every allegation of paragraphs 1 through 66 herein as if set forth verbatim.

68. At all times material hereto, Plaintiff has had prospective business relations and expectancies with Plaintiff's mower products customers and prospective customers, for the purchase and sale of other products within Plaintiff's zone of natural product expansion such as, for example, ATVs.

69. Defendant was aware of said prospective business relations and expectancies, or should have been aware of the same.

70. The misconduct of Defendant alleged herein tortiously interfered with said business relations, and with said prospective customers and expectancies; such misconduct includes, among other things establishing and maintaining distributors or dealers of Defendant's ATV products under the BAD BOY mark.

71. Defendant's continued unauthorized use of Plaintiff's BAD BOY mark has interfered with and impaired Plaintiff's ability to introduce products into the ATV market using Plaintiff's BAD BOY MTV mark.

72. Defendant has employed improper means by using Plaintiff's BAD BOY mark without Plaintiff's consent.

73. Defendant has an improper motive to profit from and exploit Plaintiff's BAD BOY mark without Plaintiff's permission and without payment to Plaintiff.

74. In view of the letters provided to Defendant by Plaintiffs, such activities were, and remain, willful and intentional, and both Plaintiff and the public have been injured by such activities.

75. As a direct and proximate result of the misconduct of Defendant alleged herein, Plaintiff is entitled to recover Defendant's profits in an amount to be determined at trial, plus treble damages or other enhanced damages based on Defendant's willful, intentional, and/or grossly negligent acts, plus attorneys' fees.

76. Some of the misconduct of Defendant alleged herein has been committed with malice, or with reckless disregard for the injury that such misconduct would cause to Plaintiff, entitling Plaintiff to punitive or exemplary damages.

COUNT 6 - Common Law Trademark Infringement and Unfair Competition

77. Plaintiff re-alleges each and every allegation of paragraphs 1 through 76 herein as if set forth verbatim.

78. Defendant's continued unauthorized use of Plaintiff's BAD BOY mark constitutes common law trademark infringement and unfair competition.

79. As a direct and proximate result of the misconduct of Defendant alleged herein, Plaintiff is entitled to recover Defendant's profits in an amount to be determined

at trial, plus treble damages or other enhanced damages based on Defendant's willful, intentional, and/or grossly negligent acts, plus attorneys' fees.

WHEREFORE, Plaintiff requests a jury trial on any issues so triable, and Plaintiff respectfully prays for the following relief:

(1) A preliminary and permanent injunction enjoining Defendant, its employees, agents, officers, directors, attorneys, representatives, successors, affiliates, subsidiaries and assigns, and all those in concert or participation with any of them from:

- (a) imitating, copying, using, reproducing, registering, attempting to register and/or displaying any mark so resembling any of Plaintiff's Marks as to be likely to cause confusion, mistake or deception therewith; and
- (b) using any false description or representation or any other thing calculated or likely to cause consumer confusion, deception or mistake in the marketplace with regard to Plaintiff's Marks;

(2) An order directing that Defendant remove all signage and deliver up for destruction all materials and matter in its possession or custody or under its control that infringe Plaintiff's Marks, including, without limitation, all advertising and promotional materials;

(3) An order for corrective advertising in a form, manner and frequency that is acceptable to Plaintiffs and the Court;

(4) An order directing that Defendant file with the Court and serve upon counsel for Plaintiffs within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which it has complied with this Court's orders;

(5) Judgment against Defendant, awarding Plaintiff all profits of Defendant resulting from its misconduct alleged herein, in an amount to be proven at trial;

(6) Judgment against Defendant, awarding Plaintiff treble damages based upon Defendant's profits after an accounting thereof, including all statutory enhancements and other enhancements on account of the willful nature of Defendant's misconduct;


(7) An award of prejudgment and post judgment interest;

(8) An award of Plaintiff's costs and expenses, including, without limitation, Plaintiff's attorneys' fees incurred herein; and

(9) All other relief, in law or in equity, to which Plaintiff may be entitled, or which the Court deems just and proper.

Respectfully submitted by:

CALHOUN LAW FIRM
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Little Rock, AR 72225

 9-12-08
By: Joe D. Calhoun date
(Ark. Bar. No. 85021)
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